

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD SNOWDEN,

Defendant,

and

MACMILLAN PUBLISHING GROUP, LLC
d/b/a HENRY HOLT AND COMPANY, *et al.*,

Relief-Defendants.

Case No. 1:19-cv-1197-LO-TCB

CONSENT DECREE

This Consent Decree is entered into between Plaintiff the United States of America (“Plaintiff” or the “Government”) and Relief-Defendant Macmillan Publishing Group LLC d/b/a Henry Holt and Company (“Macmillan US”). The term “Parties” collectively refers to the Government and Macmillan US.

The above-captioned action (the “Action”) was brought by the Government against Edward Snowden (“Snowden”) for breach of contract and breach of fiduciary duty arising in part from the publication of his book *Permanent Record* (the “Book”). The Book was published pursuant to a publishing agreement between Snowden and a German company, HIM Holtzbrinck 37 GmbH (“HIM 37”), entered into as of March 7, 2019 (the “Publishing Agreement”). Pursuant to a separate license agreement, HIM 37 licensed certain rights in the Book to Macmillan US,

including the right to publish the English version of the Book in the United States of America and other territories. Further pursuant to the Publishing Agreement, Snowden received certain monetary payments prior to the Book's publication (those payments referred to, collectively, as the "Advance").

In the Amended Complaint (the "Complaint") filed in the Action (ECF No. 15), the Government named Macmillan US, HIM 37, and a third, affiliated German entity, Verlagsgruppe Georg von Holtzbrinck GmbH ("VG"), as Relief-Defendants, against whom no claims of liability were asserted, but who, according to the Complaint, were named as necessary parties for purposes of according the Government complete relief in this action. (VG and HIM 37 are referred to collectively herein as the "German Companies," and, with Macmillan US, collectively as the "Relief-Defendants.")

On November 20, 2019, Macmillan US filed an answer to the Amended Complaint (ECF No. 54). Neither of the German Companies has appeared in the Action, and they have stated that, should the lawsuit continue against them, they would contest this Court's personal jurisdiction over them.

On December 17, 2019, the Court granted the Government's motion for partial summary judgment against Snowden on the issue of liability (ECF No. 63).

Without admitting any fault or liability, or waiving any objections or claims to personal jurisdiction as to the German Companies, the Parties now desire to resolve all present, potential and future claims with respect to the Book (as further defined in paragraph 1 below), including the issues and claims raised in the Action, in order to avoid further time, expense and the inconvenience of litigation. It is therefore agreed, by and between the Parties, that the case

against the Relief-Defendants should be resolved by the Court's entry of this Consent Decree as an enforceable Court Order containing the following terms:

1. **Order not to disburse further monies to Edward Snowden.** Macmillan US will not on or after the date of this Consent Decree disburse to Snowden, his agents, assignees or others (excluding the Macmillan Releasees, as defined in paragraph 6 below) acting on his behalf (collectively, the "Snowden Parties") any monies in relation to the Book that would otherwise be payable to Snowden but are owed to the Government as a result of this action, including but not limited to any monies that otherwise may become due to Snowden under the Publishing Agreement. Macmillan US will further ensure that none of the Macmillan Releasees will disburse to the Snowden Parties on or after the date of this Consent Decree any monies in relation to the Book, including but not limited to any monies that otherwise may become due to Snowden under the Publishing Agreement. Macmillan US's obligations under this paragraph 1 will terminate if the Action is finally resolved, after any and all appeals have been exhausted, in Snowden's favor with a determination that Snowden is not liable to the Government for monies earned in respect to the Book. The phrase "the Book" as used in the preceding paragraph and the numbered paragraphs of this Consent Decree shall include any version or edition of the Book, any licensed material from the Book, and any subsidiary, additional, and reserved rights pertaining to the Book, such as those outlined in paragraphs 4 and 7 of the Publishing Agreement.

2. **Transfer of Royalties to the Government.** If the Action is finally resolved, after any and all appeals have been exhausted, in the Government's favor with a determination that Snowden is liable to the Government for monies earned in respect to the Book, the Government will so notify Macmillan US in a manner agreed upon by the Parties and Macmillan US will

thereafter pay to the Government any monies otherwise due from the Macmillan Releasees to Snowden under the Publishing Agreement or with respect to the Book but owed to the Government as a result of the Action. Such monies will be payable to the Government as and when they would have been payable to Snowden (but no earlier than thirty (30) days after delivery to Macmillan US of such notice in the manner agreed upon by the Parties as provided above). Macmillan US will pay to the Government any such monies that came due on or after the date of this Consent Decree but prior to delivery of such notice within thirty (30) days after delivery of such notice. For the avoidance of doubt, Macmillan US hereby warrants that monies otherwise payable to the Snowden Parties in respect to the Book, but owed to the Government as a result of the Action, will not be paid to the Snowden Parties by any Macmillan Releasee and that, if payments of any such monies are made by any Macmillan Releasee to the Snowden Parties in violation of this Consent Decree, Macmillan US shall be liable to the Government for violation of this Consent Decree. For the sake of clarity, Macmillan US is not liable to the Government for the Advance and will be obligated to pay to the Government pursuant to this paragraph 2 only the amounts, if any, that would otherwise have been payable by the Relief-Defendants or any Macmillan Releasee to Snowden after the commencement of the Action under the Publishing Agreement or otherwise with respect to the Book.

3. **Form of Payments.** All payments to be made under this Consent Decree shall be made in accordance with instructions and procedures provided to Macmillan US by counsel for the Government from the Department of Justice, Civil Division, Federal Programs Branch.

4. **Periodic Accounting.** Macmillan US will provide to the Government via means to be agreed upon by the Parties a copy of each semi-annual statement of account that is provided, or is required to be provided, to Snowden or the Snowden Parties pursuant to the

Publishing Agreement or otherwise in respect to the Book. Macmillan US will provide the Government with such statement of account within seven business days after Macmillan US provides, or is required to provide, the statement to Snowden or the Snowden Parties.

5. **Binding Effect.** This Consent Decree, including but not limited to the obligations and warranties set forth in paragraphs 1-4 hereto, shall also be binding upon Macmillan US's successors and assigns, as the case may be. In addition, Macmillan US will secure an agreement with each of the German Companies obligating the German Companies not to make any payment to Snowden or the Snowden Parties in contravention of paragraphs 1 and 2 of this Consent Decree and to provide to Macmillan US, consistent with paragraph 4 of this Consent Decree, copies of the semi-annual statements of account provided to the Snowden Parties, or required to be provided to the Snowden parties, pursuant to the Publishing Agreement or in respect to the Book, so that those obligations are binding on any successors or assigns of the German Companies and remain in force in the event the corporate structure among Macmillan US and one or both of the German Companies changes.

6. **Release.** In consideration of Macmillan US's obligations, the Government has entered into a separate agreement releasing the following persons and entities from all claims and liabilities in connection with the Book and this Action: (a) Macmillan US, VG, and HIM 37, (b) their present, former and/or future parent companies, subsidiaries, divisions, units, and affiliates, including but not limited to Macmillan UK, S. Fischer, Georg von Holtzbrinck GmbH & Co. KG ("Holtzbrinck"), Macmillan Publishers, Inc., and Holtzbrinck Publishers, LLC, and (c) the respective present, former, and/or future partners, principals, shareholders, officers, directors, employees, agents, representatives, successors and assigns of each of the legal entities included in (a) or (b) solely in their capacities as such (collectively, with the entities described in (a) and

(b), the “Macmillan Releasees”). Pursuant to that agreement, upon approval of this Consent Decree by the Court, the Government will enter a notice of voluntary dismissal without prejudice as to the German Companies.

7. This Consent Decree is governed by and shall be interpreted under the laws of the United States.

8. This Consent Decree becomes an Order of the Court on the date it is approved.

9. If any provision of this Consent Decree is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of the Consent Decree and shall not affect the validity and enforceability of all of its other provisions, as long as such severance does not materially change the Parties’ rights and obligations.

10. The undersigned counsel are fully authorized to enter into this Consent Decree on behalf of their respective clients.

11. The Parties acknowledge that they have, through their respective counsel, mutually participated in the preparation of this Consent Decree, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or its attorney.

12. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

13. Each of the Parties to this Consent Decree shall bear their own attorney's fees and costs.

WE ASK FOR THIS:

Elizabeth A. McNamara (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st floor
New York, New York 10020
Tel: (212) 489-8230
Fax: (212) 489-8340
Email: elizabethmcnamara@dwt.com



Daniel Reing (VA Bar Number 73348)
Eric Feder (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Ave NW
Washington, DC 20006
Tel: (202) 973-4200
Fax: (202) 973-499
Email: danielreing@dwt.com
ericfeder@dwt.com

Attorneys for Relief-Defendants

JOSEPH H. HUNT
Assistant Attorney General

G. ZACHARY TERWILLIGER
United States Attorney

DAVID M. MORRELL
Deputy Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

ANTONIA KONKOLY

Trial Attorney

SERENA ORLOFF

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L St. NW, Room 12024

Washington, DC 20530

Tel.: (202) 514-2395

Fax: (202) 616-8470

Email: antonia.konkly@usdoj.gov

*Lauren A. Wetzler with permission
Edward M. Lane*

LAUREN A. WETZLER

Chief, Civil Division

Assistant United States Attorney

Office of the United States Attorney

2100 Jamieson Avenue

Alexandria, Virginia 22314

Tel: (703) 299-3752

Fax: (703) 299-3983

Email: Lauren.Wetzler@usdoj.gov

Counsel for the United States

SO ORDERED this 9th day of April, 2020

United States District Judge

Liam O'Grady

United States District Judge

RECEIVED

2020 APR -3 P 2: 21

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

United States District Judge
Liam O'Grady